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is not induced or encouraged by it, the husband's agreement to pay the wife a stipulated allowance has been held binding. *Pettit v. Pettit*, 107 N. Y. 677. In the principal case, since the parties were living apart and the contract by its terms looked forward to a termination of the separation rather than to its continuance, the decision seems to have been correct.

HUSBAND AND WIFE—WIFE MAY RECOVER FROM HUSBAND FOR INFECTION WITH VENEREAL DISEASE.—Plaintiff's husband, having contracted a venereal disease, communicated it to her. In an action for damages, *held*, plaintiff may recover. *Crowell v. Crowell* (N. C., 1920), 105 S. E. 206.

The case represents a further addition to the growing list of authorities which allow a wife recovery from her husband for personal injuries inflicted by him. Furthermore, it is the first case in which infection with venereal disease has been the tort sued upon. The common law, because of the fictitious merger of the wife's existence into the husband's, denied her any right of action against him. The Married Women's Acts do not expressly allow it, but, with some variations, provide that the wife may sue or be sued separately for wrongs done to or by her as though she were unmarried. Courts which refuse the wife an action argue that these statutes, being in derogation of the common law, must be strictly construed, and therefore the words "sue separately as though unmarried" must be construed as effecting no more than a procedural change by permitting her to enforce her common law rights without joining her husband. Consequently, they do not add to her rights by giving her an action which she did not possess at common law. *Thompson v. Thompson*, 218 U. S. 611 (noted in 9 MICH. L. REV. 440), decided by a divided court in 1910, is a recent leading case adopting this construction. Justices Harlan, Holmes and Hughes were the dissenters, saying "the effect [of such a construction is] to defeat the clearly expressed will of the legislature by a construction of its words that cannot be reconciled with their ordinary meaning." This dissenting opinion was crystallized in 1914 in the decision of *Brown v. Brown*, 88 Conn. 42 (noted in 12 MICH. L. REV. 700), in which the Connecticut court blazed the trail by allowing the wife to recover from her husband for assault and battery. The court recognized the Married Women's Act was intended to work a real change in the marriage status by allowing the wife to retain after marriage her separate legal existence and pre-nuptial legal rights, and consequently to recover damages for injuries tortiously inflicted upon her, whether the defendant was a stranger or her husband. This seems to be a reasonable construction of the language of the statutes and at the same time it reaches a result in harmony with the modern social order. The next case allowing recovery was *Fiedler v. Fiedler*, 42 Okla. 124 (1915). However, the court was helped to its decision by the unusual wording of the Oklahoma statute, which provides that "women shall retain the same legal existence and legal personality after marriage as before." OKLA. REV. LAWS, 1910, Sec. 3363. But in *Gilman v. Gilman*, 78 N. H. 4 (1916), the court construed a statute of the usual form to allow the action. In *Fitzpatrick v. Owens*, 124 Ark. 167 (1916),

the court allowed recovery by the wife's administrator for her wrongful death at the hands of her husband, but considerable reliance was placed upon the wording of the Arkansas statute, which, in addition to giving the wife the right "to sue and be sued," provided that she should "enjoy all rights and be subjected to all the laws of the state as though she were a *femme sole*." ACTS OF ARKANSAS, 1915: Act to Remove Disabilities of Married Women, Sec. 1. The court thought that even though the "sue and be sued" clause might, by strict construction, effect only a procedural change, yet the additional phrase removed the common law restriction upon the wife's rights, conferred the right to sue her husband in tort, and consequently gave her administrator the same right. *Johnson v. Johnson* (Ala.), 77 South. 335 (1917), and *Prosser v. Prosser* (S. C.), 102 S. E. 787 (1920), were, however, decided squarely upon what might be called the modern social interpretation of the usual form of Married Women's Acts. The principal case is the latest of the series, and it, too, cannot be explained by any special wording of the statute. The rapidity with which these decisions are being handed down is a fair indication that in a few years the time-honored disability of the wife to sue her husband for personal injuries will be ancient history.

INTOXICATING LIQUORS—LEGAL POSSESSION UNDER PROHIBITORY STATUTE.—The defendant, who accepted a friend's invitation to take a drink of intoxicating liquor, was indicted for having liquor in his possession, under a statute providing that "It shall be unlawful for any person * * * to have in his possession any intoxicating liquor; * * * and such possession and proof thereof shall be *prima facie* evidence that said liquor was so held and kept for the purpose of unlawful sale or disposition." The trial court charged as follows: "The word 'possession' has a well-defined meaning, and it is this: I have in my possession a spectacle case; if I pick up a glass containing whisky I have in my possession whisky." It was *held* that this charge was erroneous, since the legislative intent, as collected from the context of the entire statute, was to prohibit possession for the purpose of unlawful sale or distribution. *State v. Jones* (Wash., 1921), 194 Pac. 585.

"Possession" has been defined as that condition of facts under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all other persons. *Rice v. Frayser*, 24 Fed. 450. The conception of the Civilians was that the *animus domini*, or intent to deal with the thing as owner, was in general necessary to turn a mere physical detention into juridical possession. SAVIGNY, *JUS POSSESSIONIS*, bk. II, § 21. While the common law likewise includes intent as an element of possession, its requirements are not so comprehensive as those of the Roman law. It is sufficient under the common law that there be an intent to exclude all other persons, and it is not necessary that there should be an assumption of the role of absolute owner. *Vide* the case of a tenant for years, or that of one having a possessory lien. See HOLMES, *COMMON LAW*, p. 220. Thus, it has been quite properly said that "Possession does not necessarily depend on title. * * * Title is concerned with the internal connection of the owner with his prop-